

Seibel, J
(S)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Plaintiff,

v.

JEFF S. SMITH,

Defendant.

17 Civ. 5808 (CS)

~~PROPOSED~~ ORDER TO SHOW
CAUSE FOR AN ORDER FOR A
PRELIMINARY INJUNCTION AND
TEMPORARY RESTRAINING
ORDER

Upon the Summons and Complaint of Plaintiff International Business Machines Corporation ("IBM"), the Declaration of Pietro Signoracci, executed on July 9, 2017, the Declaration of Arvind Krishna, executed on July 31, 2017, and the accompanying Memorandum of Law in Support of Plaintiff's Application for a Temporary Restraining Order and Preliminary Injunction, and good and sufficient reason appearing to me therefor, it is hereby

ORDERED that Defendant Jeff S. Smith or his counsel show cause at a hearing to be held in this Court before the Honorable Cathy Seibel, United States District Judge, in Courtroom 621, United States Courthouse, 300 Quarropas Street, White Plains, New York, on August 21, 2017 at 9:30 a.m., or as soon thereafter as counsel may be heard, why the Court should not enter an order for a preliminary injunction pursuant to Rule 65(a) of the Federal Rules of Civil Procedure and the Court's inherent powers, pending final determination of this action:

(a) enjoining and restraining Defendant Smith from commencing employment with Amazon Web Services ("AWS") or otherwise associating with AWS prior to May 2, 2018;

(b) enjoining Defendant Smith, prior to May 2, 2018, from soliciting for competitive business purposes any customer of IBM with which Defendant Smith was involved as part of his job responsibilities at IBM during the last twelve months of his employment at IBM;

(c) enjoining Defendant Smith, prior to May 2, 2019, from directly or indirectly hiring, soliciting, or making an offer to any employee of IBM to be employed or perform services outside IBM;

(d) enjoining Defendant Smith from using, disclosing, or transmitting for any purpose records, documents, or information containing any confidential or proprietary information of IBM; and

(e) ordering such further relief the Court deems just and proper;

AND it being shown by the above-referenced declarations and memorandum of law that Plaintiff will suffer immediate and irreparable harm unless, pending the hearing of the motion brought on by this Order to Show Cause, a temporary restraining order be in effect, providing the relief requested by Plaintiff on this motion for a preliminary injunction, pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, it is hereby

ORDERED that Defendant Jeff S. Smith is temporarily ENJOINED AND RESTRAINED, until the hearing and determination of Plaintiff's motion for a preliminary injunction, from: (i) working at, or providing any services for, AWS; (ii) soliciting any customer of IBM with which Defendant Smith was involved as part of his job

except to the extent allowed under a "listen & learn" order to be entered separately

responsibilities at IBM during the last year of his employment at IBM; (iii) contacting any current employees of IBM for the purpose of influencing them to leave IBM; and (iv) retaining, using, or disclosing IBM confidential or proprietary information; and it is further

ORDERED that security in the sum of \$100,000 shall be posted by Plaintiff on or before 8/4/17; and it is further

ORDERED that Plaintiff shall effect personal delivery of a copy of this order and supporting papers, by hand delivery service and email to Defendant or Defendant's counsel, no later than 5 p.m. on August 1, 2017, which shall be deemed good and sufficient service and notice thereof; and it is further

ORDERED that Defendant shall file with the Court and serve any responsive papers by overnight delivery and email on Plaintiff's counsel, Robert A. Atkins, Esq., Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019-6064, ratkins@paulweiss.com, on or before _____.m. on _____, 2017 and that Plaintiff shall file with the Court and serve any reply papers by overnight delivery and email on Defendant or Defendant's counsel, on or before _____.m. on _____, 2017.

SO ORDERED:

Dated: 8/1/17

Cathy Seibel
U.S.D.J.

^{Submit}
The parties should ~~file~~ affidavits of direct testimony and proposed findings of fact & conclusions of law to the Court by 9 am on 8/14/17.

~~The~~ The schedule will be modified if Defendant opt for a hearing before M-J. Dawson before 8/21/17.